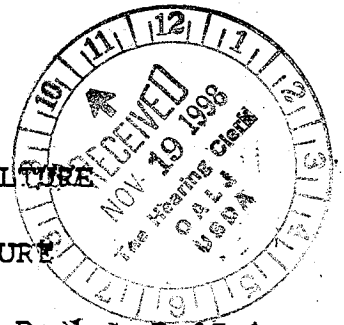


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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In Re:) P. & S. Docket D-95-14
)
Poplarville Stockyards, Inc.,)
M & J Cattle Company, Inc.,)
and Joe Mack Smith,)
) Decision with Respect to
) Respondent,
Respondents) Joe Mack Smith

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.) by a complaint and an amended complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the financial condition of neither of the corporate respondents Poplarville Stockyards, Inc. nor M & J Cattle Company, Inc. meets the requirements of the Act and that respondents have wilfully violated the Act and the regulations issued thereunder (9 C.F.R. § 201.1 et seq.). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

The Respondent, Joe Mack Smith, admits the jurisdictional allegations in paragraph I of the complaint and specifically admits that the Secretary has jurisdiction in this matter,

neither admits nor denies the remaining allegations, waives oral hearing and further procedure, and consents and agrees, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

The Complainant agrees to the entry of this decision.

Findings of Fact

(1) Poplarville Stockyards, Inc., hereinafter "respondent Poplarville," is a corporation whose mailing address was P.O. Box 306, Poplarville, Mississippi 39470.

(2) Respondent Poplarville, at all times material herein, was:

(a) Engaged in the business of conducting and operating the Poplarville Stockyards, Inc., a posted stockyard subject to the provisions of the Act, hereinafter referred to as "the stockyard;"

(b) Engaged in the business of a market agency selling livestock in commerce on a commission basis at the stockyard;

(c) Engaged in the business of a dealer buying selling livestock in commerce for its own account; and

(d) Registered with the Secretary of Agriculture as a market agency to sell livestock on a commission basis.

(3) M & J Cattle Company, Inc., hereinafter "respondent M & J", is, and at all times material herein, was a corporation whose mailing address was P.O. Box 306, Poplarville, Mississippi 39470.

(4) M & J is, and at all times material herein, was:

(a) Engaged in the business of a dealer buying and selling livestock in commerce for its own account; and

(b) Registered with the Secretary of Agriculture as a dealer buying and selling livestock in commerce for its own account.

(5) Joe Mack Smith, hereinafter "respondent Smith", is an individual whose mailing address is 423 Mill Creek Road, Poplarville, Mississippi 39470.

(6) Respondent Smith, at all times material herein was general manager of the respondent Poplarville, and responsible for the direction, management, and control of the respondent Poplarville; and

(7) Is, and at all times material herein, was president and owner of 50% of the issued stock of M & J, and responsible for the direction, management, and control of the respondent, M & J.

Conclusions

The respondent having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, such decision will be entered.

Order

Respondent Smith, his agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall CEASE and DESIST from:

(1) Engaging in business as a dealer or market agency while insolvent, that is, while current liabilities exceed current assets;

(2) Making such use or disposition of funds of his possession or control as will endanger or impair the faithful and prompt accounting therefor and the payment of the portions thereof which may be due the owners or consignors of livestock;

(3) Using funds received as proceeds from the sale of consigned livestock for purposes of his own or for any purpose other than for the payment of the net proceeds to the owners or consignors of such livestock, or for the payment of sums due the respondents as compensation for services rendered or for other lawful marketing charges;

(4) Failing to otherwise maintain his Custodial Account for Shippers' Proceeds in strict conformity with the provisions of section 201.42 of the regulations (9 C.F.R. § 201.42);

- (5) Issuing checks to consignors in payment of the net proceeds resulting from the sale of consigned livestock without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;

(6) Failing to remit to consignors net proceeds resulting from the sale of consigned livestock; and

(7) Failing to remit to consignors, when due, the net proceeds resulting from the sale of consigned livestock; and


(8) Failing to pay, when due, the full purchase price of livestock.

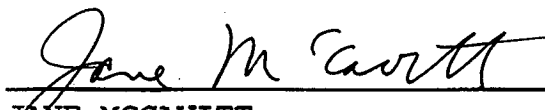
The respondent Smith, the alter ego of Poplarville and of M & J, is SUSPENDED as a registrant under the Act for a period of two years; PROVIDED THAT a supplemental order terminating the period of suspension may be issued upon demonstration that full restitution has been made to all unpaid sellers and consignors of livestock; and PROVIDED FURTHER, that this order may be modified upon application to the Packers & Stockyards Programs, GIPSA, to permit the salaried employment of the respondent Smith, by a

registrant or packer after the initial 180 days of the term of suspension upon demonstration of circumstances warranting modification of the order.


The provisions of this order shall become effective on the sixth day after service of this order on the respondent.

Copies of this decision shall be served upon the parties.


JOE MACK SMITH
Respondent


JANE MCCAIVITT
Attorney for Complainant

Issued this day 19th day of November 1998


DOROTHEA A. BAKER
Acting Chief Administrative Law Judge

for JAMES W. HUNT
Administrative Law Judge